

AMENDED IN SENATE APRIL 7, 2005

SENATE BILL

No. 570

Introduced by Senator Migden

February 18, 2005

~~An act to amend Section 5008 of, and to add Article 15.5 (commencing with Section 645) and Article 15.6 (commencing with Section 647) to Chapter 2 of Part 1 of Division 2 of, the Welfare and Institutions Code, relating to minors. An act to add Section 68553.5 to the Government Code, and to add Sections 711, 712, and 713 to the Welfare and Institutions Code, relating to minors.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 570, as amended, Migden. Mentally incompetent minors.

(1) *Existing law requires the Judicial Council to perform various duties designed to assist the judiciary.*

This bill would require the Judicial Council, to the extent resources are available, to provide education on mental health and developmental disability issues affecting juveniles in delinquency proceedings to judicial officers and other public officers and entities, as specified.

(2) *Existing law establishes various criteria for evaluating whether a minor is seriously emotionally disturbed or has a developmental disability.*

This bill would authorize the court to order a minor who is a ward of the juvenile court to be referred for evaluation of whether the minor has a serious mental disorder, is seriously emotionally disturbed, or has a developmental disability either when it appears to the court that the minor may have one of these conditions or upon request of the minor's counsel. The bill would also require an evaluation ordered by the court to be made by an appropriate and licensed mental health professional with specified credentials, and would require the

evaluator to personally examine the minor and submit to the court a written report of his or her findings to guide the court.

The bill would establish dispositional procedures for the court to follow for minors determined to be seriously emotionally disturbed, or who have serious mental disorders or developmental disabilities. Those procedures would include referral of the minor to a multidisciplinary team for review, as specified, development and review of a treatment plan by the multidisciplinary team, and a dispositional order by the court, consistent with the needs identified in the team's report and other specified factors. The bill would further provide that a court that orders multidisciplinary team review shall be eligible for inclusion in the county's plan requesting Proposition 63 funding. The bill would make related findings and declarations.

~~Existing criminal law provides for a stay of criminal proceedings and establishes procedures to determine the mental competence of a person who has been charged with a crime. In certain circumstances, these provisions authorize a stay of the criminal proceedings in order to conduct a trial by court or jury on the question of mental competence.~~

~~Existing law, the Lanterman-Petris-Short Act, provides for the involuntary detention and treatment of certain persons who are determined to be gravely disabled.~~

~~This bill would establish specified procedures for conducting a hearing regarding the mental competence of a minor under juvenile court law, and temporarily suspend any other proceeding until the competency of the minor is determined. The bill would impose various duties on the juvenile court and counsel for a minor who is the subject of those proceedings, as specified. The bill would provide that a minor is presumed competent, unless a preponderance of the evidence proves otherwise. The bill would also provide that a minor who is the subject of those proceedings may be determined to be gravely disabled for purposes of the Lanterman-Petris-Short Act.~~

~~The bill would require a court, in any detention or dispositional hearing, to order an evaluation of a minor who appears to have a developmental disability, a substance abuse disorder, or a mental disorder, as specified.~~

~~The bill would authorize the juvenile court to commit a minor determined incompetent to a facility pursuant to specified provisions, and require the director of the regional center for persons with developmental disabilities or the county mental health director, as~~

appropriate, to make evaluations and treatment recommendations. The bill would further establish procedures to subject a minor to involuntary or outpatient treatment, and, if competency is restored, for the return of a minor to the juvenile court, as specified. By expanding the duties of the county mental health director, the bill would impose a state-mandated local program.

The bill would also require specified state entities to collaborate with county representatives to make a specified determination regarding mental health and substance abuse treatment options. In addition, the bill would require certain state agencies to perform a study regarding the feasibility of establishing a treatment facility for specified minors.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. It is the intent of the Legislature that a minor~~
- 2 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
- 3 ~~following:~~
- 4 ~~(1) Many of the minors in our state's juvenile justice system~~
- 5 ~~have severe emotional disturbances or developmental~~
- 6 ~~disabilities.~~
- 7 ~~(2) There are many different statutes under which a court is~~
- 8 ~~authorized to order evaluation of these minors, and different~~
- 9 ~~funding sources from which payment for an evaluation may be~~
- 10 ~~made.~~
- 11 ~~(3) There is no uniform statewide standard or procedure for~~
- 12 ~~evaluation of these minors. Under the current law, it is difficult~~
- 13 ~~to ensure that these minors' needs are being met.~~
- 14 ~~(b) It is the intent of the Legislature to enact legislation that~~
- 15 ~~will create a unified statutory scheme for the evaluation of~~

1 minors in the juvenile justice system who have severe emotional
2 disturbances or developmental disabilities, so that these minors
3 may be evaluated prior to disposition and, if the minors are
4 identified as having a disability, placed where they may receive
5 integrated services and treatment whenever possible.

6 SEC. 2. Section 68553.5 is added to the Government Code, to
7 read:

8 68553.5. To the extent resources are available, the Judicial
9 Council shall provide education on mental health and
10 developmental disability issues affecting juveniles in delinquency
11 proceedings pursuant to Section 602 of the Welfare and
12 Institutions Code to judicial officers and, as appropriate, to other
13 public officers and entities that may be involved in the arrest,
14 evaluation, prosecution, defense, disposition, and postdisposition
15 or placement phases of delinquency proceedings. The education
16 shall include, to the extent possible, using available resources,
17 information on the early identification of mental illness or
18 developmental disability in delinquency proceedings, on
19 statutory and case law providing for the assessment or
20 evaluation of minors with mental health problems or
21 developmental disabilities, on specialized adjudication or
22 disposition procedures, such as mental health courts, that may
23 apply to these minors, and on appropriate programs, services,
24 and placements for minors with mental health problems or
25 developmental disabilities, including information on the benefits
26 and detriments of placing minors with mental health problems or
27 developmental disabilities in secure juvenile justice facilities,
28 such as the Department of the Youth Authority.

29 SEC. 3. Section 711 is added to the Welfare and Institutions
30 Code, to read:

31 711. (a) When it appears to the court, or upon request of
32 counsel for the minor, at any time, that a minor who is alleged to
33 come within the jurisdiction of the court under Section 602, may
34 have a serious mental disorder, is seriously emotionally
35 disturbed, or has a developmental disability, the court may order
36 that the minor be referred for evaluation, as described in Section
37 712.

38 (b) A minor, with the approval of his or her counsel, may
39 decline the referral for mental health evaluation described in
40 Section 712 or the multidisciplinary team review described in

1 *Section 713, in which case the matter shall proceed without the*
2 *application of Sections 712 and 713, and in accordance with all*
3 *other applicable provisions of law.*

4 *SEC. 4. Section 712 is added to the Welfare and Institutions*
5 *Code, to read:*

6 *712. (a) The evaluation ordered by the court under Section*
7 *711 shall be made, in accordance with the provisions of Section*
8 *741, by an appropriate and licensed mental health professional*
9 *who meets one or more of the following criteria:*

10 *(1) The person is licensed to practice medicine in the State of*
11 *California who is trained and actively engaged in the practice of*
12 *psychiatry.*

13 *(2) The person is licensed as a psychologist under Chapter 6.6*
14 *(commencing with Section 2900) of Division 2 of the Business*
15 *and Professions Code.*

16 *(b) The evaluator selected by the court shall personally*
17 *examine the minor, conduct appropriate psychological or mental*
18 *health screening, assessment, or testing, and prepare and submit*
19 *to the court a written report indicating his or her findings and*
20 *recommendations to guide the court in determining whether the*
21 *minor has a serious mental disorder or is seriously emotionally*
22 *disturbed, as described in Section 5600.3, or has a*
23 *developmental disability, as defined in Section 4512. If the minor*
24 *is detained, the examination shall occur within three court days*
25 *of the court's order of referral for evaluation, and the*
26 *evaluator's report shall be submitted to the court not later than*
27 *five court days after the evaluator has personally examined the*
28 *minor, unless the submission date is extended by the court for*
29 *good cause shown.*

30 *(c) Based on the evaluator's written report, the court shall*
31 *determine whether the minor has a serious mental disorder or is*
32 *seriously emotionally disturbed, as described in Section 5600.3,*
33 *or has a developmental disability, as defined in Section 4512. If*
34 *the court determines that the minor has a serious mental*
35 *disorder, is seriously emotionally disturbed, or has a*
36 *developmental disability, the case shall proceed as described in*
37 *Section 713. If the court determines that the minor does not have*
38 *a serious mental disorder, is not seriously emotionally disturbed,*
39 *or does not have a developmental disability, the matter shall*

1 *proceed without the application of Section 713 and in*
2 *accordance with all other applicable provisions of law.*

3 *(d) A court that orders the mental health evaluations*
4 *described in this section shall be eligible for inclusion in the*
5 *county's plan requesting Proposition 63 funding.*

6 *(e) This section shall not be construed to interfere with the*
7 *legal authority of the juvenile court or of any other public or*
8 *private agency or individual to refer a minor for mental health*
9 *evaluation or treatment as provided in Section 370, 635.1, 704,*
10 *741, 5150, 5694.7, 5699.2, 5867.5, or 6551 of this code, or in*
11 *Section 4011.6 of the Penal Code.*

12 *SEC. 5. Section 713 is added to the Welfare and Institutions*
13 *Code, to read:*

14 *713. (a) For any minor described in Section 711 who is*
15 *determined by the court under Section 712 to be seriously*
16 *emotionally disturbed, have a serious mental disorder, or have a*
17 *developmental disability, and who is adjudicated a ward of the*
18 *court under Section 602, the dispositional procedures set forth in*
19 *this section shall apply.*

20 *(b) Prior to the preparation of the social study required under*
21 *Section 706, 706.5, or 706.6, the minor shall be referred to a*
22 *multidisciplinary team for dispositional review and*
23 *recommendation. The multidisciplinary team shall consist of*
24 *qualified persons who are collectively able to evaluate the*
25 *minor's full range of treatment needs and may include*
26 *representatives from local probation, mental health, child*
27 *welfare, education, community-based youth services, and other*
28 *agencies or service providers. The multidisciplinary team shall*
29 *include at least one licensed mental health professional as*
30 *described in subdivision (a) of Section 712.*

31 *(c) The multidisciplinary team shall review the nature and*
32 *circumstances of the case, including the minor's family*
33 *circumstances, as well as the minor's relevant tests, evaluations,*
34 *records, medical and psychiatric history, and any existing*
35 *individual education plan or individual program plans. The*
36 *multidisciplinary team shall provide for the involvement of the*
37 *minor's available parent, guardian, or primary caretaker in its*
38 *review, including any direct participation in multidisciplinary*
39 *team proceedings as may be helpful or appropriate for*
40 *development of a treatment plan in the case. The team shall*

1 identify the mental health or other treatment services, including
2 in-home and community-based services that are available and
3 appropriate for the minor, including services that may be
4 available to the minor under federal and state programs and
5 initiatives, such as wraparound service programs. At the
6 conclusion of its review, the team shall then produce a
7 recommended disposition and written treatment plan for the
8 minor, to be appended to, or incorporated into, the probation
9 social study presented to the court.

10 (d) The court shall review the treatment plan and the
11 dispositional recommendations prepared by the multidisciplinary
12 team and shall take them into account when making the
13 dispositional order in the case. The dispositional order in the
14 case shall be consistent with the primary treatment needs of the
15 minor, as identified in the report of the multidisciplinary team,
16 and consistent with the protection of the public. The minor's
17 disposition order shall incorporate, to the extent feasible, the
18 treatment plan submitted by the multidisciplinary team, with any
19 adjustments deemed appropriate by the court.

20 (e) The dispositional order in the case shall authorize
21 placement of the minor in the least restrictive setting that is
22 consistent with the minor's treatment needs, with the treatment
23 plan approved by the court, and with the protection of the public.
24 The court shall, in making the dispositional order, give
25 preferential consideration to the return of the minor to the home
26 of his or her family, guardian, or responsible relative with
27 appropriate in-home, outpatient, or wraparound services, unless
28 that action would be, in the reasonable judgment of the court,
29 inconsistent with the minor's treatment needs or with the need to
30 protect the minor or the public.

31 (f) A court that orders the multidisciplinary team review as
32 described in this section shall be eligible for inclusion in the
33 county's plan requesting Proposition 63 funding.

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36 **All matter omitted in this version of the bill**
37 **appears in the bill as introduced in Senate,**
38 **February 18, 2005 (JR11)**
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